

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Russo	Team: Squad #11	CCRB Case #: 201909743	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 10/27/2019 2:00 AM	Location of Incident: Inside 42nd Street Port Authority Station, near the A, C, E trains on 40th Street and 8th Avenue.	Precinct: 14	18 Mo. SOL 4/27/2021	EO SOL 12/12/2021	
Date/Time CV Reported Mon, 10/28/2019 10:07 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/08/2019 11:07 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Claudio Diaz	16786	957538	TB M/TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Claudio Diaz	Abuse: Police Officer Claudio Diaz questioned § 87(2)(b)	
B.POM Claudio Diaz	Abuse: Police Officer Claudio Diaz threatened to arrest § 87(2)(b)	
C.POM Claudio Diaz	Abuse: Police Officer Claudio Diaz threatened § 87(2)(b) with the use of force.	
D.POM Claudio Diaz	Abuse: Police Officer Claudio Diaz took a photograph of § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

## Case Summary

On October 28, 2019, § 87(2)(b) filed this complaint over the phone with the CCRB.

On October 27, 2019, at approximately 2 AM, § 87(2)(b) entered the 42<sup>nd</sup> Street Port Authority Subway Station, near the A, C, and E lines on West 40<sup>th</sup> Street and 8<sup>th</sup> Avenue in Manhattan. After swiping his metro card through the turnstiles, § 87(2)(b) stopped above the staircase, leading to the platform of the downtown A, C, and E trains. As began fixing his belt, an unidentified female MTA cleaning employee allegedly believed that § 87(2)(b) was going to urinate in the station; therefore, the employee went to tell a police officer. Police Officer Claudio Diaz, of the Transit Bureau-Manhattan Task Force, allegedly approached § 87(2)(b). § 87(2)(b) screamed at him and asked him what he was doing “peeing” there (**Allegation A-Abuse of Authority**, § 87(2)(g)). After moments of back and forth between PO Diaz and § 87(2)(b), PO Diaz told § 87(2)(b) that he was loitering and that if he did not leave the mezzanine at that moment, he would arrest him (**Allegation B-Abuse of Authority**, § 87(2)(g)). § 87(2)(g) § 87(2)(b) went down the stairs to the platform and PO Diaz allegedly began threatening him, stating that § 87(2)(b) did not know all of things he would do to him if he did not have his badge on (**Allegation C-Abuse of Authority**, § 87(2)(g)). PO Diaz took out a cellphone and allegedly began recording § 87(2)(b) however, the investigation has established that PO Diaz took a photograph of § 87(2)(b) not a recording (**Allegation D-Abuse of Authority**, § 87(2)(g)). § 87(2)(b) took a photo of PO Diaz as PO Diaz allegedly recorded § 87(2)(b) and then § 87(2)(b) walked away. Shortly after, there was an altercation near § 87(2)(b)'s location on the platform, which PO Diaz responded to. PO Diaz asked the train conductor if § 87(2)(b) was the individual causing the disturbance, to which § 87(2)(b) responded that he was not causing a disturbance and was just on his way home. § 87(2)(b) did not continue a conversation with PO Diaz and walked away.

§ 87(4-b), § 87(2)(g)

There were no summonses issued or arrests made as a result of this incident.

There were negative results for Body-Worn Camera footage (BR 01), as PO Diaz's camera was not charged during the incident § 87(4-b), § 87(2)(g).

MTA footage acquired did not capture the incident.

## Findings and Recommendations

### Allegation (A) Abuse of Authority: Police Officer Claudio Diaz questioned § 87(2)(b).

The following is undisputed:

§ 87(2)(b) was in the 42<sup>nd</sup> Street subway station, where he was fixing his pants near the staircase of the A, C, E trains. An unidentified female MTA cleaning employee saw § 87(2)(b) and told PO Diaz that she believed § 87(2)(b) was going to urinate at the station, after which PO asked § 87(2)(b) a question.

MTA Legal provided video footage of the surrounding area during the date and time of the incident; however, it did not capture the incident.

§ 87(2)(b) (BR 02) stated that, while above the staircase leading to the A train platform, he was fixing his belt because his pants were falling. He noticed a female Hispanic MTA cleaner, wearing a yellow reflective vest, maneuvering a yellow mop bucket and measuring 5'3" tall. He did not recall the distance between himself and the MTA employee. The MTA employee noticed § 87(2)(b) fixing his belt and began screaming loudly in Spanish, which § 87(2)(b) did not understand; however, he believed that the MTA employee went to notify an

officer because, within seconds, PO Diaz ran up the stairs and “charged” at § 87(2)(b). When PO Diaz reached § 87(2)(b) he screamed at him and asked him what he was doing “peeing” there. § 87(2)(b) denied urinating and informed PO Diaz that he was fixing his belt. PO Diaz continued to accuse § 87(2)(b) by stating that he was going to urinate. § 87(2)(b) continued to deny PO Diaz’s accusations. § 87(2)(b) testified that there was no urine on the ground during this incident. He added that he was aware both him and PO Diaz could have walked away (BR 02).

PO Diaz (BR 03) stated that he was leaning on the guard rail by the stairs on the mezzanine of the West 40<sup>th</sup> Street and 8<sup>th</sup> Avenue subway station. He was standing with a female MTA cleaning employee, whose information PO Diaz did not recall, including a physical description. § 87(2)(b) was standing 50-feet away from PO Diaz, also on the mezzanine. The MTA employee told PO Diaz that she thought § 87(2)(b) was going to urinate but did not provide any other information as to what led her to that conclusion. The MTA employee proceeded to do her job and did not interact with § 87(2)(b) at any point, while PO Diaz was present. PO Diaz looked over at § 87(2)(b) and observed him adjusting his pants and lifting them. PO Diaz did not observe § 87(2)(b) urinating. PO Diaz asked § 87(2)(b) if he was O.K., which upset § 87(2)(b) as he began yelling and screaming at PO Diaz. § 87(2)(b) asked “I can’t adjust myself?”. PO Diaz did not recall asking § 87(2)(b) anything in regard to “peeing” or, more specifically, the phrase “what are you doing peeing there”. As § 87(2)(b) continued to yell things that PO Diaz testified he did not recall specifically, PO Diaz stood at the same location and did not respond. § 87(2)(b) went down the stairs to the platform and continued to yell. PO Diaz testified that he did not approach § 87(2)(b) at any point and spoke to him within the 50-foot distance between them, until § 87(2)(b) went down the stairs. PO Diaz added that § 87(2)(b) was free to go throughout the entire incident (BR 03).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B) Abuse of Authority: Police Officer Claudio Diaz threatened to arrest § 87(2)(b).**

After going back and forth with PO Diaz about whether he was urinating in the subway station, § 87(2)(b) (BR 02) stated that PO Diaz told him that he was loitering and would be arrested if he, § 87(2)(b) did not leave.

PO Diaz (BR 03) stated that he did not recall threatening to arrest § 87(2)(b) at any point throughout the incident, neither does he recall § 87(2)(b) committing any crimes that

he could have been arrested for.

There was no video footage available to provide further insight on the incident.

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Claudio Diaz threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) (BR 02) stated that he went downstairs after PO Diaz allegedly threatened to arrest him for loitering. While downstairs, he continued to speak with PO Diaz and asked him for the name of his supervisor, which PO Diaz refused to provide. § 87(2)(b) told PO Diaz that he would call Internal Affairs, to which PO Diaz responded, “all you guys do is snitch”. PO Diaz proceeded to call § 87(2)(b) a snitch at least ten times. PO Diaz began threatening § 87(2)(b) stating that § 87(2)(b) did not know all of things he would do to him if he did not have his badge on. § 87(2)(b) believed PO Diaz meant that PO Diaz would physically harm him. § 87(2)(b) did not specify the specific threats PO Diaz made (BR 02).

PO Diaz (BR 03) did not recall threatening to use force against § 87(2)(b)

There was no video footage available to provide further insight on the incident.

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Claudio Diaz took a photograph of § 87(2)(b)**

While downstairs, speaking to PO Diaz, Mr. § 87(2)(b) testified (BR 02) that PO Diaz took out a cellphone and § 87(2)(b) saw a flash. PO Diaz held the phone below his chest and began recording him. § 87(2)(b) § 87(2)(b) did not recall any details about PO Diaz’s cellphone. § 87(2)(b) took his phone put and took a photograph of PO Diaz recording him (BR 07).

PO Diaz (BR 03) stated that when § 87(2)(b) reached the bottom of the staircase, as he continued his previously mentioned screaming, he took a photograph of § 87(2)(b) on his department-issued cellphone (BR 08) because his body-worn camera was not working due to lack of charge.

Uniformed members of service are required to activate BWC prior to engaging in or assisting another uniformed member of service with multiple police activities, including interactions with persons suspected of criminal activity, but are allowed to record other official activities based on the officer’s discretion. Patrol Guide Procedure 212-123, “Use of Body-Worn Cameras” (BR 09)

*Uniformed members of the service are permitted, but are not required, to use Department smartphones/tablets to photograph and/or video record the enforcement situations which BWC is mandated to record. Patrol Guide Procedure 214-23, ‘Additional Data’ (BR 10)*

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

#### **Civilian and Officer CCRB Histories**


- § 87(2)(b) has been party to 3 CCRB complaints and has been named as a victim in 12 of allegations (BR 13):
  - § 87(2)(b)
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
- Police Officer Claudio Diaz has been a member-of-service for five years and has been a subject in two CCRB complaints and three allegations, none of which were substantiated. § 87(2)(b)

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) rejected to mediate this complaint.

- On March 23, 2020, the Office of the New York City Comptroller confirmed that § 87(2)(b) did not file a notice of claim regarding this incident. (BR 14)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 11

Investigator:  Investigator Jessica Russo 06/25/2020  
Signature Print Title & Name Date

Squad Leader: Edwin Pena IM Edwin Pena 06/25/20  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date